

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

PATRICIA LYNN SCHMALTZ,)	
)	
Plaintiff,)	Cause No. CV 06-75-BLG-RFC-RWA
)	
vs.)	FINDINGS AND RECOMMENDATIONS
)	OF UNITED STATES MAGISTRATE
ROBERT MEACHUM, MD)	JUDGE
HOMEcomings FINANCIAL NETWORK,)	
a subsidiary of GMAC-RFC,)	
BRUCE J. PARADIS, PRESIDENT and)	
CEO GMAC-RFC,)	
JOHN DOES,)	
)	
Defendants.)	

On July 24, 2006, defendants filed a motion to dismiss. Approximately one month later, on August 23, 2006, the Court directed plaintiff to respond to the motion. The Court advised plaintiff that failure to respond by August 30, 2006, would result in a recommendation that the action be dismissed. Plaintiff has failed to file a response, and the motion is accordingly submitted for summary ruling. L.R. 7.1(i).

The Court has reviewed defendants' motion and finds it to be well taken. Accordingly, pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned **RECOMMENDS** that the motion to dismiss be granted and that this action be dismissed for insufficiency of process pursuant to Rule 12(b)(4), Fed.R.Civ.P., insufficiency of service of process

pursuant to Rule 12(b)(5), Fed.R.Civ.P., and failure to state a claim pursuant to Rule 12(b)(6), Fed.R.Civ.P.

The Court further **RECOMMENDS** that plaintiff's notice of default filed on June 22, 2006, be stricken and that the lis pendens recorded against the subject property be released.

Under 28 U.S.C. § 636(b)(1) and Rule 72(b), Fed.R.Civ.P., the parties may serve and file written objections within 10 days of receipt of these recommendations or objection is waived.

The Clerk of Court shall notify plaintiff at her last known address and counsel of record for defendants of the making of these findings and recommendations.

DONE and DATED this 11th day of September, 2006.

/s/ Richard W. Anderson
RICHARD W. ANDERSON
UNITED STATES MAGISTRATE JUDGE